IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CIVIL APPELLATLE JURISDICTION

WRIT PETITION NO. 323 OF 2004.

Uday Ramchandra Potdar.... .... Petitioner.
V/s
State of Maharashtra & Ors... ...
Respondents.

Shri M.S.Topkar, Adv. For the petitioner.

Shri S.R.Nargolkar, AGP for respondents 1 to 4.

CORAM: V.G. PALSHIKAR
AND
V.M.KANADE, JJ.

14th June, 2006.

ORAL JUDGMENT: (**Per Palshikar, J.**)

By this petition the petitioner has challenged the order passed by the Maharashtra Administrative Tribunal on 23.7.2002. By this order the Tribunal rejected the Original Application filed by the petitioner challenging the order dated 15.2.2001 passed by respondent-State holding that the petitioner's period of suspension between 10.9.1993 to 11.3.1999 is liable to be treated as such period of suspension.

2. Few facts necessary for adjudication of this petition stated briefly are that the petitioner was working as police constable in the police department at Sangli. It was alleged that on 27.8.1993 the petitioner

demanded bribe and thereby committed an offence under the Prevention of Corruption Act, 1988. He was therefore suspended from service for being arrested and being in custody for more than 72 hours. The suspension was ordered and effected on 10.9.1993.

3. Special Case No.13/94 was conducted by the learned Sessions Judge, Sangli under section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. After trial the learned Judge found the petitioner not guilty and acquitted him of the offence with which he was charged. The order of acquittal was passed on 12.3.1999. Consequently the petitioner was reinstated in service as police constable on 24.5.1999.

4. Then on 31.10.2000 a notice was given to the petitioner under Rule 72 of the Maharashtra Civil Service (Joining time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981 asking him to show cause why the period of suspension spent by the petitioner be not treated as period of suspension. The petitioner replied on 13.12.2000 and by an order dated 15.2.2001 the respondent-authority held that the period of suspension suffered by the petitioner is liable to be treated as such period on suspension. This order was challenged before the Maharashtra Administrative Tribunal by Original Application and the Tribunal by its order impugned in this petition passed on 23.7.2002 rejected the application of the petitioner.

5. The learned counsel appearing on behalf of the petitioner submitted that the Tribunal committed an error apparent on the face of record in coming to the conclusion that he was acquitted because he was given benefit of doubt by the trial Judge. Factually according to the learned counsel this is incorrect. With the assistance of the learned counsel we have scrutinized the judgment of acquittal.

6. The Tribunal has while rejecting the application of the petitioner placed heavy reliance on a judgment of the Supreme Court in the case of ***Krishnakant Raghunath Bibhavnekar*** v/s ***State of Maharashtra,*** 1997 (3) SCC 636 and quoting extensive portion from the judgment came to the conclusion that in cases where acquittal is a result of benefit of doubt it is open for the employer to consider the period on suspension in accordance with relevant rules and so considered the order dated 15.2.2001 is correct. The Supreme Court in the said judgment observed as under :

> "We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations, is given full backwages as a matter of course on his acquittal. Two courses are open to the disciplinary authority viz. It may enquire into the misconduct unless the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but

acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may on reinstatement after following the principles of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.) Rules 1972(3), 72 (5) and 72 (7) of the rules give discretion to the disciplinary authority."

It will be seen that according to the Supreme Court two courses are open to the Disciplinary Authority. It was therefore obviously open for the Disciplinary Authority to proceed under Rule 72 of the Rules. It could in a given situation order that the period of suspension be treated as such because according to it the order of acquittal is based on doubt.

7. As observed above we have scrutinized the judgment passed by the trial Judge and we are certainly of the opinion that the acquittal of the petitioner is not as result of benefit of doubt. The learned trial Judge considered the factual evidence available before it and framed four points for adjudication and serially decided the points. Point No.1 was answered in negative after appreciating the evidence on record and discussing it at length. Observing that in the absence of any incriminating evidence on the point alleged demand of Rs.300/- a demand of illegal gratification cannot be held proved. Likewise he

proceeds to decide the other points and negates them. His reasons for disbelieving the witnesses are mentioned It is observed by the learned Judge that the accused appears to have been impleded in this case without there being sufficient evidence against him. The evidence is not sufficient. The accused was not given benefit of doubt arising out of that evidence. Finding is reached that there are discrepancies regarding exact spot of occurrence and these things make the prosecution case more feeble. The learned trial Judge placed reliance on judgment reported in the case of ***Suraj Mal*** v/s ***The State (Delhi Administration)***, AIR 1979 SC 1408 and concluded that mere recovery of money in the absence of relevant demand of that money and other circumstances it cannot be held that demand and acceptance of bribe money is proved. Thus the findings are reached on proper appreciation of evidence and there is no question of any benefit of doubt being given to the accused. The learned Judge has observed in para 28 of his judgment as under :

> "No other type of incriminating evidence was adduced by the prosecution. Prosecution evidence is quite, vague, discrepant and inconsistent. It is not possible to believe such evidence for basing the conviction. The accused therefore cannot be convicted of the charges framed against him."

The learned Judge has specifically found that it is not possible to

believe such evidence. The finding is not that the evidence is liable to be believed but the evidence so accepted creates doubt in the mind of the Judge and therefore benefit goes to the accused. In such circumstances the observation of the Tribunal that the petitioner was given benefit of doubt is unsustainable in law.

8. The learned counsel appearing on behalf of petitioner also relied upon a judgment of this Court reported in the case of ***Dattatraya Vasudeo Kulkarni*** v/s ***Director of Agriculture, Maharashtra & Ors.,*** 1984 Mh.L.J. 406 where this Court has observed that the concept of honourable acquittal or full exoneration on benefit of doubt is irrelevant for considering the entitlement of pay for the period of suspension. We need not go to this aspect of the case for the simple reason that factually we have observed that the acquittal of the petitioner in the criminal case was on merits and he was not given any benefit of doubt. In the result therefore petition must succeed and is allowed. The order of the Tribunal

as also the order dated 15.2.2001 is set aside and the respondents are directed to pay full wages for the period of suspension i.e. between 10.9.1993 to 11.3.1999.